No. 83-1730

Office-Supreme Court, U.S.
FILED
MAY 18 1984
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SEA-HIRE SERVICE, S.A.,

Petitioner,

—against—

TRINIDAD CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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May 18, 1984

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Statement of the Case

Plaintiff, Trinidad Corporation, Respondent herein, arrested the motortanker BEAUFORT MARINER pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure on June 28, 1983 in the port of New York under

process issued by the U. S. District Court for the Eastern District of New York.

Respondent claimed a maritime lien against the vessel for sums expended while acting as her special agent. Defendant Sea-Hire Service, S.A., the Petitioner herein, was the bareboat charterer of the vessel and contested the arrest in the District Court. On July 26, 1983, after evidentiary hearings, Judge Henry Bramwell ordered the interlocutory sale of the vessel. Sale proceeds were placed in the registry of the Court; a bond has since been substituted for those funds. Petitioner appealed from the interlocutory sale to the U.S. Court of Appeals for the Second Circuit. Argument was held on November 30, 1983 and on December 2, 1983. The Court of Appeals affirmed the decision of the District Court. A petition for rehearing *en banc* was denied on January 20, 1984, without one Judge sitting on the Court requesting that a vote be taken thereon. (Petitioner's Appendix A).

1. The Court of Appeals' affirmance of the District Court's findings of fact does not meet the criteria governing review on certiorari set forth at Rule 17 of the Rules of the Supreme Court and therefore, this Court should not exercise its discretion to review.

Rule 17 of the Rules of the Supreme Court of the United States emphasizes that review on certiorari is a matter of judicial discretion and should only be granted when special or important reasons exist. Listed in Rule 17 are the type of reasons which should be considered in these categories. It would appear from the petition that the alleged relevant considerations are: (1) Whether the decision of the Court of Appeals was in conflict with decisions of this Court or of other Federal Courts of Appeal

on the same issue; and (2) Whether the decision of the Court of Appeals involved an important question of federal law which has not been, but should be settled by this Court.

In Point A of its brief, Petitioner contends that the Courts below erred by granting a maritime lien to a vessel's general agent. However, its brief fails to demonstrate any conflict between the decision of the Court below and any prior decisions of this Court or any other Court of Appeals. The District Court and the Court of Appeals agreed maritime liens are available only to "special" agents of vessels rather than "general" agents. The case law criteria for determining the difference between a general and special agent were followed without dispute. The Court of Appeals simply affirmed the District Court's *findings of fact* that Respondent was a special agent, noting that it did not rely upon the creditworthiness of Petitioner and that it was to perform only limited functions on Petitioner's behalf. Contrary to Petitioner's suggestion, the Court below did not conclude that general agents of a vessel are entitled to maritime liens. Instead the Court of Appeals held, as a *finding of fact*, that Respondent met the criteria of a "special", rather than "general" agent, and hence was undisputedly entitled to a maritime lien.

In Point B of its brief, Petitioner argues that on the date of the arrest of the vessel, Respondent was not a valid maritime lien claimant because: (1) it was "not disputed" that on that date, Respondent owed Petitioner $118,000; and (2) as a matter of law, Respondent was not entitled to a maritime lien for necessary services and supplies it had arranged for the vessel, because, as of the date of her arrest, it had not yet paid for them. Petitioner's first argument is inaccurate because Respondent did dispute the status of its accounts with Petitioner on the date of the vessel's arrest. These facts were hotly contested

both at the trial level and in the Court of Appeals. Respondent argued that on the date of the vessel's arrest, it had made actual cash outlays of $46,571.71 in excess of sums received from Petitioner. Implicit in the decisions below was a *finding of fact* that on the date of the vessel's arrest, Respondent had made actual, unreimbursed cash outlays on the vessel's behalf, which entitled it to the status of a maritime lien claimant.

Respondent had also shown in the District Court that in addition to $46,571.71 in actual cash outlays, it had also become indebted in the amount of approximately $285,000 to materialmen from whom it had ordered necessary services and supplies, all furnished to the vessel before the date of her arrest. Petitioner has cited no cases that directly supports its contention that an agent must have made actual cash outlays, (which Respondent in fact did), as opposed to incurring debts, before it is entitled to arrest a vessel. *P.T. Perusahaan Pelayaran Samudera Trikora Lloyd* v. *T.S. Salzachtal,* 373 F. Supp. 267 (E.D.N.Y. 1974), cited by both the Court of Appeals and the District Court, directly supports the contrary conclusion. In *The Salzachtal, supra,* the Court upheld the maritime lien status of an agent who advanced funds *after* the date of arrest of a vessel to pay for necessaries ordered by the agent and provided *prior* to the date of arrest. In permitting a subrobated claim of lien against the vessel, the Court noted that the subrogated party "became obligated to pay those who performed these services at the time they were performed, which was shortly before the ship was arrested . . .", 373 F. Supp. at 279. This is precisely the situation in the present case.

Obviously, the holding below that the services and supplies furnished by Respondent were "necessary" to the vessel was a pure *finding of fact.*

Point C of Petitioner's brief addresses another pure question of fact, i.e., whether Respondent had notice of the prohibition of lien clause in Petitioner's bareboat charter party with the vessel's owner. The Court of Appeals affirmed the District Court's finding that Respondent had no notice of such clause, and therefore was not barred from asserting a maritime lien.

Traditionally, this Court has held that issues of fact are not "important" for the purposes of Rule 17. It is respectfully submitted that this Court, in the sound exercise of its discretion, should decline to grant the review which the Petitioner now seeks, just as the Court of Appeals declined to disturb a decision turning solely upon the District Court's findings of fact.

On issues of fact such as those upon which the decision in this case rests, the Court of Appeals is the Court of last resort. As was aptly stated by Mr. Justice Frankfurter in *National Labor Relations Board* v. *Pittsburg S.S. Co.*, 340 U.S. 498, 503 (1951):

> "This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather then the other, though fair-minded judges could find it tilting either way."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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